(9)

Cr. 673/-

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

Second Appeal No. 224 Of 2006 **Single Bench**

APPELLANTS: 1. BRIJMOHAN DUA S/o SITA RAM
DEFENDANTS aged about 58 years, resident of Gondpara Bilaspur, Tahsil and District Bilaspur (CG).

2. SMT. CHANDRAKALI BAI W/o A.PRAKASH aged about 50 years, resident of Jarhabhata Bilaspur, Tahsil and District Bilaspur (CG).

VERSUS

RESPONDENTS : 1. Indian Church Council of Disciples of
PLAINTIFFS Christ , Through Secretary , Padari N.L.Soni, Jarahabhata, Bilaspur (CG).

P.R. No. 1415/06 presented by Shri U.R. Kesharwani dated 1/12/06

2. United Church of Northern India Trust Association, registered Company, Registration No. 29/2, Registered Office Bombay, Through Attorney P.C.Singh, Bishop Jabalpur, Diocese Jabalpur, Madhya Pradesh.

MEMORANDUM OF SECOND APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE 1908

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S.A. No. 224 सन् 2006

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	22.06.2006 Shri GS Agrawal, Senior Advocate with Shri KR Nair, counsel for the appellants. Shri Alok Bakshi, counsel for respondent No.1. None for respondent No.2. Heard on admission and M.(C.)P.No.846/2006. Respondent No.1 filed a Civil Suit against the appellants for possession of the suit land having a house three rooms and for perpetual injunction, pleading that the suit land and constructions is situated in Nazul Plot 85/01 and has been described in the map annexed along with the plaint which is in possession of appellants who in the month of January, 1984 forcibly dispossessed him, who are also threatening that even if they are ousted from the suit property they would again take forcible possession thereof. The property was leased by respondent No.1 to appellant No. 1 by a registered lease deed for growing vegetable with certain conditions, but violating those conditions appellant No. 1 not only utilized the property for other purposes even raised some permanent constructions and has leased the same to other persons, therefore, a Civil Suit bearing No.229-A/76 was instituted for recovery of house	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

and land. Appellant No. 1 remained exparte. The suit No.229-A/76 was decreed on 28.3.1977 by Civil Court in favour of respondent No.1, who in execution proceedings got possession over the suit property on 5.10.1977 and also got some moveable properties attached towards recovery of decretal amount, thereafter, respondent No. 1 was in possession over all the properties, subsequently in January, 1984 appellants took forcible possession of the suit property and also filed a civil suit bearing No.37-A/91, but their titles were not established in the Court and instead, the Court held that the property belongs to respondent No.1.

Appellant assailing the suit on various grounds stated that the suit property does not belong to respondent No.1, but they are the owners of suit property which is their ancestral property and are in possession thereof and are cultivating it.

After evaluating the evidence on record, 3rd Civil Judge Class-I Bilaspur decided the suit vide judgment and decree dated 15.04.2005 passed in Civil suit No.12-A/2002. Learned Court decided that Secretary of the council has right to institute the suit, the issue which relates to lease and violation of lease conditions are governed

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 3 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	by principle of resjudicata, further held that respondent No.1 obtained a decree in Civil Suit No.229-A/76 for possession and balance of lease amount. On 11.12.1983, appellant No.1 un-authorisedly encroached three rooms, one house and some vacant land which was the disputed property of Civil suit No.229-A/76. Therefore, the suit was decreed for possession and damage in favour of respondent No.1. Appellants, feeling aggrieved, filed an appeal bearing civil appeal No.16-A/05. 9th Additional District Judge (FTC) Bilaspur decided the appeal vide judgment and decree dated 26.04.2006 holding that the findings recorded by the trial Court are in accordance with the evidence and documents on record. The judgment and decree of lower court is in consonance with evidence and law. Therefore, he dismissed the appeal. Feeling aggrieved by that impugned judgment and decree, this Second appeal has been filed by the appellants under Section 100 of the CPC stating that following substantial questions of law are involved in the appeal: 1) Whether the learned appellate Court and lower Court was justified in decreeing the suit, when case was not proved?	

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मामला क्रमांक S.A. No. 224 सन् 2006

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 4 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	2) Whether learned appellant Court and trial Court were justified in holding only issue No.2 and 3 as barred by resjudicata and not the entire suit? 3) Whether the appellate Court as well as trial Court were justified in not holding the decree and judgment passed in Civil Suit No.229-A/76 as not binding on the appellant - defendants when the tenancy was not determined according to law and was null and void ? 4) Whether the learned appellate Court as well as trial Court were justified in not framing an issue on question of binding nature of the decree and judgment in Civil Suit No.229-A/76, when it is specially raised in para-3 of written statement? 5) Whether the learned appellate Court as well as trial Court was justified in refusing to allow the vital amendment dated 03.03.2005, which was going to the root of the case and affecting the decision of the case? Learned counsel for the appellants contended that earlier judgment and decree passed by Civil Court in civil suit No. 229-A/1976 was null and void and was not binding on appellants, the identity of suit property was different from the property involved in	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Civil Suit No. 229 A/1976 and the trial court did not frame correct issues to decide the real controversy between the parties. Both the courts below have concurrently held that the Secretary of respondent No.1 has right to institute the suit property, property in dispute in Civil Suit No. 229-A/1976 and the instant suit are not different. Respondent No.1 in execution of the decree passed in Civil Suit No. 229-A/76 obtained possession of the suit property and thereafter appellants have taken possession of a part of the same un-authorisedly. Therefore, the suit has been decreed by both the Courts for possession. From the pleadings, evidence and dispute raised before the Courts below and their findings, following are the proved conspicuous features: 1) Appellant No. 1 by executing a registered lease deed obtained suit property on lease from respondent No.1 on certain conditions but violated those conditions therefore, respondent No. 1 brought a civil suit bearing Civil Suit No. 229-A/1976 against the appellant No. 1 for possession.	

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Appellant No. 1 remained exparte therefore, exparte decree dated 23.3.1977 was passed against him. Appellant No. 1 filed application under Order 9 Rule 13 of the Code of Civil Procedure for setting aside the exparte decree but could not succeed. The decree reached to its finality and appellant No. 1 was bound to restore possession to respondent No. 1. 2) In execution proceeding pursuant to warrant of possession the suit property was given to respondent No. 1 in possession on 5.10.1977. 3) Admittedly, when the instant suit was filed, appellants were in possession of the suit land and both the Courts below have held that appellants have unauthforisedly dispossessed the respondent No. 1. 4) From the pleadings and judgment passed in another civil suit brought by appellants bearing Civil Suit No. 37-A/91, judgment dated 23.12.1996, it is clear that appellant failed to prove that land bearing Khasra No. 85/1 and 65/1 belongs to them instead Court has held that the said property belongs to Mission trust.	

COURT

Dudoy. 12/5/08

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा क्रमांक	हस्ताक्षर सहित आदेश 7	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

In the instant suit the Court was required to decide only following two questions:

1) Whether respondent No. 1 received the property in possession as a result of execution of decree?

2) Whether respondent No. 1 was in possession and was subsequently forcibly dispossessed by the appellants?

Both the questions are question of facts and not of law and both the courts below gave concurrent findings against the appellants, whether a decree passed in civil suit No. 229-A/1976 though reached to its finality against appellant No. 1 is binding or not is not a subject matter of the instant suit, even otherwise such a decree passed by Civil Court till declared null and void by a competent court are binding against the person against whom it has been passed. To resolve the real controversy proper issues have been framed and have been decided by Courts below after appreciating evidence on record and in accordance with law. The suggested substantial question of law is not involved in the instant suit.

After going through the complete record and argument advanced by the appellants, I am of the opinion that no substantial

Dated 12/5/06

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
V	question of law is involved in the appeal; therefore, the Second Appeal filed by the appellants deserves to be dismissed at this motion stage and accordingly it is dismissed in limine. M.(C.)P.No.846/2006 and IA No.1642/2006 stand disposed of. Sd/- V.K.Shrivastava Judge	

padma

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